IV. THE COMMISSION SHOULD INITIATE A RULEMAKING TO DETERMINE WHETHER IT SHOULD REQUIRE INCUMBENT LOCAL EXCHANGE CARRIERS TO PROVIDE BILLING AND COLLECTION SERVICES TO CASUAL CALLING SERVICE PROVIDERS

Pilgrim commends the Bureau for its stated desire to solve the problem of access to ILEC bills through the pursuit of non-regulatory options. The commitment the Commission generally has made to promoting competition, to relying on marketplace forces, and to eliminating unnecessary and encumbering regulations has been a sound public policy.

Pilgrim also understands the Commission's reluctance with respect to regulating billing and collection,[31] and we support any efforts to build industry-wide consensus and cooperation to ease the billing and collection problems associated with casual calling services. We are also concerned, however, that the Commission will find it extremely difficult to forge such a consensus or enlist the cooperation necessary to arrive at non-regulatory solutions to the problems defined by the Commission. We believe this is especially true because the key issue illuminated by the Bureau — "the problem of access to the local exchange carrier bill"[32] — is not a problem caused by technical or practical difficulties that might lend themselves to industry study and resolution. Rather, in Pilgrim's view, this key problem is an economic one: the ILECs want to withhold access to their bills, or to overcharge for this access, in order to enhance their own economic and competitive objectives.

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[31] *See* Pilgrim CPP Comments at 30 ("Requiring the LECs to provide billing and collection would cause the Commission to tread into the domain of regulation, and the Commission may understandably be reluctant to take such a step because it could be misinterpreted as a deviation from the Commission's resolve to promote and enhance competition, and to rely upon the operation and effects of competition, in telecommunications markets.").

[32] Bureau Meeting Advisory at 1 (unpaginated).

In these circumstances, Pilgrim believes that the Commission should strive for an open-minded approach as it evaluates the nature of these billing and collection problems, and the range of remedies and solutions that may be brought to bear. While industry-sponsored technical solutions should be explored and analyzed, the Commission should be wary of any suggestion that pursuing these solutions can be an exclusive and satisfactory approach to these billing and collection problems.

A. The Commission Should Base Its Decision Regarding Whether To Initiate a Rulemaking Upon Its Evaluation of Several Questions Regarding the Billing and Collection Services Market

There are several straightforward questions that Pilgrim believes can help guide a decision by the Commission regarding whether to initiate a rulemaking proceeding in response to the MCI Petition. In our view, the Commission should focus on the following issues:

- In evaluating the claims of MCI and other parties that they are harmed by the withholding of ILEC billing and collection, or its availability only pursuant to discriminatory and restrictive rates, terms, and conditions, how should the relevant market be defined? Is the market simply billing and collection for non-subscribed services, or should it be defined in some other fashion?

- Once the market is defined, what choices do casual calling service providers have in this market for obtaining billing and collection services? What substitutes are available, and how effective are these substitutes in enabling these service providers to bill and collect for their services? What evidence is there that casual calling carriers are availing themselves of these substitutes?

- Is there evidence that ILECs and casual calling service providers are bargaining on equal terms in their billing and collection contract negotiations? What weight should be placed upon

assertions in the record by these service providers that they are often confronted by "take it or leave it" bargaining tactics by ILECs, with little opportunity to avoid unreasonable rates and restrictive and discriminatory contract terms and conditions?

■ Based upon these various considerations, what evidence is there that ILECs are able to exert market power in the relevant market? To the extent such market power is present, what evidence is there that ILECs have incentives to abuse this market power to further their own business ends and are in fact currently doing so in the marketplace?[33]

These questions are relevant because MCI and other parties have squarely raised the issue that the market is not working. Providers of non-subscribed services assert that they need the means to bill and collect effectively for their services, that ILECs control the facilities and operations necessary to achieve this effective billing and collection, that there are no practical alternatives to ILEC billing and collection, and that ILECs are abusing their control over billing and collection services to the detriment of competition and consumers. If these parties are correct,

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[33] MCI has alleged that the ILEC practices it describes in its petition "constitute nothing more or less than an attempt to secure an unparalleled competitive advantage as these LECs enter interexchange markets." MCI Petition at 2. Similar concerns informed the congressional decision to include restrictions on ILEC activities in the Telecommunications Act of 1996:

> The Bell operating companies are not now free to go out and compete with the long distance companies because they have a monopoly in most places in local service. It is not fair for the Bell operating companies to have a monopoly in local service, retain that monopoly and get involved in competitive circumstances in long distance service.

141 Cong. Rec. S8057 (1995) (statement of Sen. Dorgan), *quoted in* Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20602 n.6 (1998).

then the Commission has a responsibility under the Communications Act (the "Act") to ensure that these competitive and consumer injuries are remedied and the anti-competitive market practices cease.

Bureau representatives at the Billing and Collection Meeting stressed their view that proponents of a regulatory solution to the problem of access to ILEC bills for non-subscribed services must clear a high hurdle in order to convince the Commission that such solutions should be invoked through a Commission rulemaking. Putting to one side the appropriateness of that Bureau formulation, it remains the case that those parties favoring regulatory solutions should at least be given the opportunity to run down the track. If the Commission refuses to initiate a rulemaking, then this opportunity is lost.

Perhaps the Commission will conclude that it can support a determination at this juncture that neither the questions Pilgrim has posed in this section nor any other questions or considerations raise any basis for concern, and that these questions and considerations can be definitively answered based upon the current record in a way that justifies a conclusion that there are no market problems that require or warrant Commission attention. If, however, the Commission believes that serious issues have been raised, that these issues persist and have not faded away in the more than two and one-half years that have passed since MCI filed its rulemaking petition, and that the Commission's function is to make findings about what is happening in the market for casual calling billing and collection and to invoke any necessary remedies, then the Commission should now act to initiate a rulemaking so that these tasks can be accomplished.

In evaluating the issues posed by the MCI Petition and the accompanying record, and in deciding whether to begin a rulemaking, Pilgrim believes that the Commission should not be unduly daunted by the possibility that regulatory action may be necessary. In this connection, it is

important to note that the rulemaking proceeding could explore *both* regulatory solutions (such as requiring ILECs to provide billing and collection for non-subscribed services at reasonable rates and on reasonable terms and conditions), *and* solutions that would not impose such requirements upon ILECs (such as the establishment and administration of a call-related billing information clearinghouse).[34]

Another reason that the Commission should no longer hesitate to begin a rulemaking proceeding in response to the MCI Petition is that there is sufficient precedent for the Commission to explore regulatory solutions in cases in which the public interest and market conditions warrant such action. In the recent *UNE Remand Order*,[35] for example, the Commission reaffirmed its imposition of a wide range of network unbundling requirements upon ILECs, finding that:

> The incumbent LECs still enjoy cost advantages and superiority of economies of scale, scope, and ubiquity as a result of their historic, government-sanctioned monopolies. These economies are now critical competitive attributes and would belong unquestionably to the

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[34] In Pilgrim's view, it would be appropriate and useful for the Commission to examine in the context of a rulemaking proceeding the advisability of establishing an independently administered call-related database for non-subscribed services because, for example, progress in solving technical and other issues could be enhanced if such work were pursued under the auspices of the Commission's guidance and leadership. The Commission has followed such a course in other rulemakings. *See, e.g.*, Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18742 (para. 132) (1996) (requiring periodic reports from a group composed of industry, law enforcement, and consumer representatives "detailing the status of the issues involving the interfaces and signalling systems to be deployed for [wireless] E911 services, what decisions have been made by standard bodies or through mutual agreement among the interested parties, and what can be done to expedite the resolution of the issues.").

[35] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released Nov. 5, 1999 (*UNE Remand Order*).

> incumbent LECs if they had "earned" them by superior competitive skills. These advantages of economies, however, were obtained by the incumbents by virtue of their status as government-sanctioned and protected monopolies. We believe that these government-sanctioned advantages remain barriers to [other] carriers' ability to provide a range of services to a wide array of customers, and that their existence justifies placing a duty on the incumbent carriers to share their network facilities.[36]

A rulemaking proceeding in response to the MCI Petition should examine whether the ILECs' billing and collection apparatus, which Pilgrim believes is the product of their status as "government-sanctioned and protected monopolies,"[37] should be shared with providers of non-subscribed services pursuant to requirements promulgated by the Commission in order to eliminate barriers to these providers' ability to offer their services.

In addition, in its review of ILEC merger proposals, the Commission has exercised its regulatory authority by imposing conditions on mergers in order to foster competition and serve the public interest. In the NYNEX-Bell Atlantic merger,[38] for example, the Commission imposed a wide-ranging set of conditions after finding that its "overarching policy goal of developing robust competition . . . requires that market performance be permitted to improve to the point

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[36] *Id.* at para. 86.

[37] *Accord* AT&T Reply Comments at 3-4 ("ILECs' cost advantage for B&C services is not derived from any efficiencies they have created, but is an artifact of their historical status as monopoly providers of local exchange services (a monopoly that was in many cases maintained by force of law).").

[38] Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent To Transfer Control of NYNEX Corporation and Its Subsidiaries, File. No. NDS-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997) (*Bell Atlantic Merger Order*).

where competition, rather than regulation, effectively constrains market power."[39] The Commission concluded that:

> The unilateral and coordinated effects of a proposed merger are mitigated by competitive forces only to the extent that barriers to entry or expansion are sufficiently low that actual or other possible competitors can and would expand or enter with sufficient strength, likelihood and timeliness to render unprofitable an attempted exercise of market power resulting from the merger.[40]

The Commission in the *Bell Atlantic Merger Order* took regulatory action by imposing merger conditions because of its view that such action was necessary to strengthen competitive forces so that the marketplace ultimately could be relied upon to prevent anti-competitive behavior. The MCI Petition and the assertions made by a number of participants at the Billing and Collection Meeting raise similar issues.

The Commission should initiate a rulemaking proceeding to examine whether regulatory action is necessary to enable the development of a greater degree of competition in the market for billing and collection for non-subscribed services, so that casual calling service providers can provide their competitive services without the impediments created by excessive ILEC billing and collection rates, and by discriminatory and restrictive ILEC billing and collection practices. Such a rulemaking proceeding should also examine the extent to which ILEC rates and billing and collection practices are causing competitive harm to the casual calling market, as well as any remedies that should be fashioned to eliminate this competitive harm.

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[39] *Id.* at 19992.

[40] *Id.*

A further observation made by the Commission in the *Bell Atlantic Merger Order* is pertinent to the issues raised by the MCI Petition and at the Billing and Collection Meeting. In evaluating the possible effects of the merger and weighing the need for conditions, the Commission noted that:

> For mass market services, entrants will have to invest in establishing the brand name recognition and, even more importantly, the mass market reputation for providing high quality telecommunications services. These consumer "goodwill" assets take significant amounts of time and resources to acquire. An unknown entrant's attempts to build "goodwill" by providing reliable, high quality services relies heavily on the cooperation of the incumbent LEC that provides interconnection, unbundled elements, resold services or transport and termination, and can be frustrated by the incumbent LEC if that carrier engages in discriminatory conduct affecting service quality, reliability or timeliness. For all these reasons, we cannot at this time simply assume that implementation of the Telecommunications Act of 1996 and the potential for development of competition will eliminate any concerns about potential competitive effects of mergers, particularly the effects on the pace of the development of competition. Nor should we lose sight of the fact that mergers can raise competitive concerns even in markets that appropriately are not subject to regulation, as competition is often a matter of degree.[41]

Pilgrim believes that this line of analysis and these concerns have equal force in the context of ILEC billing and collection for non-subscribed services. If ILECs have the capability and incentives to engage in discriminatory practices that hinder the ability of casual calling providers to offer their services, this raises serious issues regarding whether the Commission's pro-competitive policies are being undermined. Given the fact that credible allegations have been made by numerous parties in this proceeding, most recently at the Billing and Collection Meeting, that ILECs are in fact engaging in such conduct, Pilgrim believes that the Commission's

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[41] *Id.* at 20012.

analysis and policies reflected in the merger context underscore the need for a rulemaking proceeding to evaluate and resolve these issues.

The recent merger of Ameritech Corp. and SBC Communications Inc.[42] offers further evidence of the fact that the Commission should be prepared to exercise its regulatory authority when such action is necessary to promote pro-competitive goals and further the public interest. In that proceeding the Commission found that the proposed merger would harm consumers of telecommunications services in a variety of ways but that the merger conditions adopted by the Commission "change the public interest balance."[43] While acknowledging that its congressional "mandate is to achieve competition, not to devise a complex regulatory regime[,]"[44] the Commission also observed that its "public interest authority enables it to rely upon its extensive telecommunications regulatory and enforcement experience to impose and enforce certain types of conditions that tip the balance and result in a merger yielding overall positive public interest benefits."[45]

The Commission found that one of the reasons for its regulatory action in the Ameritech-SBC merger case was the fact that "the proposed merger . . . would increase the incentives and

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[42] *See* Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent To Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, released Oct. 8, 1999.

[43] *Id.* at para. 4.

[44] *Id.* at para. 17.

[45] *Id.* at para. 52 (footnote omitted).

ability of the larger merged entity to discriminate against rivals in retail markets where the new SBC will be the dominant incumbent LEC."[46] The Commission also noted that "[t]he merger will lead the merged entity to raise entry barriers that will adversely affect the ability of rivals to compete in the provision of retail advanced services, interexchange services, local exchange and exchange access services, thereby reducing competition and increasing prices for consumers of those services."[47]

The Ameritech-SBC merger, in Pilgrim's view, raises a number of issues that are similar to the concerns articulated in the MCI Petition and elaborated in subsequent pleadings and at the Billing and Collection Meeting. Just as the Commission was concerned in the merger proceeding that the merged entity could abuse its dominant market power by erecting entry barriers and engaging in discriminatory practices harmful to competition and consumers, the Commission also should be concerned about the assertions in this proceeding that ILECs currently are using their control over billing and collection resources to extract supra-competitive profits and engage in restrictive and discriminatory practices that are currently damaging competition and harming consumers. Pilgrim believes that the seriousness of these allegations clearly establishes a need for the Commission to initiate a rulemaking proceeding to assess the credibility of these allegations, to weigh whatever evidence ILECs can produce in rebuttal, and to explore any appropriate regulatory or non-regulatory actions.

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[46] *Id.* at para. 60.

[47] *Id. See id.* at paras. 186, 188.

B. The Commission Should Examine Whether To Invoke Its Ancillary Jurisdiction under the Communications Act as a Means of Requiring Incumbent Local Exchange Carriers To Provide Billing and Collection

As we have noted, Pilgrim understands and is sympathetic toward the concerns expressed by Bureau representatives at the Billing and Collection Meeting that the Commission should avoid re-regulating ILEC billing and collection if it is possible to do so. We also believe, however, that the Commission's original action detariffing billing and collection established an analytical framework that must now be applied to determine whether the facts of this case fit with the facts of the earlier circumstances that supported the Commission's decision to detariff billing and collection.[48]

The Supreme Court has held that the Commission may exercise its ancillary jurisdiction under the Act to the extent that such action "is imperative if [the Commission] is to perform with appropriate effectiveness certain of its other responsibilities."[49] The Commission, in turn, found in the *Billing and Collection Order* that "we could invoke our ancillary jurisdiction under Title I of the Communications Act"[50] because "[w]e believe these powers would be sufficient to enable

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[48] *Cf.* Pilgrim CPP Comments at 14-22.

[49] United States v. Southwestern Cable, 392 U.S. 157, 173 (1968), *cited in* Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181, released Sept. 29, 1999, at para. 95 & n.220.

[50] *Billing and Collection Order*, 102 F.C.C.2d at 1169 (para. 35).

us to regulate exchange carrier provision of billing and collection service to interexchange carriers . . . ."[51]

The Commission also concluded in the *Billing and Collection Order* that "[t]he exercise of ancillary jurisdiction requires a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose[,]'"[52] and "that because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service . . . ."[53]

The Commission cited three reasons for its decision to detariff billing and collection. First, competition was provided "by credit card companies, collection agencies, service bureaus and the LECs . . . ."[54] Second, competition also was "defined . . . by the customers . . . themselves. To the extent that [interexchange carriers] are able to meet their own billing and collection needs, the market acts on the LEC in much the same way as competition from other third

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[51] *Id.* at 1169 (para. 36).

[52] *Id.* at 1170 (para. 37) (quoting Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20808, Final Decision, 77 F.C.C.2d 384, 433 (para. 126) (1979)). *See* Public Service Commission of Maryland and Maryland People's Counsel, Applications for Review of a Memorandum Opinion and Order by the Chief, Common Carrier Bureau, Denying the Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, Public Utilities Commission of New Hampshire Petition for Rulemaking Regarding Billing and Collection Services, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4005 (para. 38).

[53] *Billing and Collection Order*, 102 F.C.C.2d at 1170 (para. 37).

[54] *Id.* The Commission noted that "[c]ompetition between the [Bell Operating Companies] may even develop." *Id.* at 1170 n.49.

party billing vendors does."[55] Finally, "detariffing will enhance competition in the billing and collection market by giving the LECs flexibility in structuring and pricing their offerings."[56]

Thus, the Commission in the *Billing and Collection Order* staked out its ancillary jurisdiction but decided against using this authority to continue to regulate LEC billing and collection because it found market forces to be a sufficient check on LEC practices that otherwise would be harmful to competition and to consumers.

This leads to an obvious and central question: Do competitive forces in today's market for billing and collection for non-subscribed interexchange services support the same conclusion?

Pilgrim does not believe there is any credible line of argument for the proposition that the Commission should deny MCI's petition for rulemaking and not even examine this question. There is substantial and persuasive evidence in the record of this proceeding that the test for deregulating billing and collection established in the *Billing and Collection Order* is not met in the case of non-subscribed services. A rulemaking proceeding is necessary to weigh the strength of this evidence, to gather additional facts regarding the operations of the marketplace, to evaluate

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[55] *Id.* at 1170 (para. 37) (footnote omitted). The Commission was confident about the ability of at least some IXCs to take over their own billing and collection functions, noting that "[w]hile we recognize that AT&T does not have the ability to become completely self-reliant at the present time, the record indicates that AT&T will have this ability to a large extent soon." *Id.* at 1170 n.50. Eleven years later, AT&T had this to say: "AT&T's market data also strongly support MCI's showing that there currently are no economically feasible means to bill callers for non-subscribed services other than by using existing ILEC billing and collection arrangements." MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Comments of AT&T Corp., filed July 25, 1997 (AT&T Comments), at 2. *See* AT&T Reply Comments at 4-5.

[56] *Billing and Collection Order*, 102 F.C.C.2d at 1171 (para. 38).

the ILECs' own evidence and responsive arguments, to propose potential remedies, and to promulgate these remedies if the Commission concludes that such action is warranted by the record.

V. THE COMMISSION SHOULD REQUIRE INCUMBENT LOCAL EXCHANGE CARRIERS TO SUBMIT COST DATA TO SUPPORT ANY CLAIMS THAT THEY HAVE ESTABLISHED REASONABLE RATES FOR BILLING AND COLLECTION SERVICES PROVIDED TO CASUAL CALLING SERVICE PROVIDERS

The information and arguments presented at the Billing and Collection Meeting are the latest chapter in framing a central question, which we also have posed in these Comments:

> *Is the market working effectively to check unreasonable rates, terms, and conditions for billing and collection services provided by ILECs to casual calling service providers?*

Pilgrim believes that, if the evidence requires that this question must be answered in the negative, then the policy adopted by the Commission in the *Billing and Collection Order* mandates that the Commission must act to ensure that sufficient checks are in place to prevent ILECs from using their billing and collection apparatus (a product which Pilgrim would assert has been gained "as a result of their historic, government-sanctioned monopolies")[57] in a manner harmful to competition and to consumers.

As we have noted in an earlier section, a central component of the Commission's decision to detariff LEC billing and collection in the *Billing and Collection Order* was its conclusion that market forces effectively constrained rates charged by LECs to IXCs for billing and collection. The Commission was confident that billing and collection alternatives available to IXCs would place sufficient downward pressure on LEC rates. In this proceeding, MCI and other parties are

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[57] *UNE Remand Order* at para. 86.

maintaining that there are no viable alternatives to ILECs for non-subscribed service billing and collection, and that ILECs are using this situation to their advantage by overcharging for their services. As we noted earlier, for example, MCI asserted at the Billing and Collection Meeting that rates have increased by an average of 100 percent in billing and collection contracts for non-subscribed services recently negotiated by MCI with ILECs.

AT&T's discussion of the ILECs' cost advantages, their rate-setting practices, and their business motivations, bears repeating:

> The reasons for ILECs' cost advantage in billing and collection are easily identified. ILECs must incur, as a fixed cost, charges to mail each of their subscribers a monthly bill, and these costs are built into the these [*sic*] carriers' rates. The *incremental* cost to an ILEC to add a page to its bill for a non-subscribed service provided by an IXC is minimal in comparison to an IXC's cost to create, mail and collect a bill in its entirety in order to collect for what may be a single call. As the amount for which an IXC must bill a given customer grows, an ILEC's incremental cost advantage becomes less and less significant and may be offset by other advantages of direct-billing, such as the ability to communicate directly with customers. But, for the small amounts billed monthly to the vast majority of non-subscribed callers, this cost differential will in many cases exceed an IXC's potential profit on a particular invoice.
>
> The problem the [MCI] Petition identifies is not a hypothetical one. Like MCI, AT&T was recently informed by a major ILEC that unless AT&T agrees to guarantee that at least 85% of its interexchange traffic will be billed through the ILEC's B&C services, it will nearly *double* its prices for billing and collection as of the end of 1997. Of course, such a condition could be easily satisfied by that ILEC's long distance affiliate; but for a competing IXC that intends to provide its own billing services to its presubscribed customers or that intends to utilize the B&C services of a third party, such a requirement is patently unacceptable. The fact that such a volume requirement is not grounded in any legitimate business needs underscores its anticompetitive intent.[58]

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[58] AT&T Comments at 3-4 (emphasis in original) (footnote omitted).

ILECs opposing the MCI Petition generally have argued that, since IXCs have not been compelled to enter the business of providing non-subscribed services, they should bear the costs of billing and collection as one of the components of their own business plans, and they should not be permitted to pass these costs off to the ILECs. US West presents this case in colorful terms:

> [IXCs] should not be permitted to pocket the savings they enjoy by being relieved from the total costs associated with billing for interexchange non-subscribed services to increase their bullish participation in local exchange services, while simultaneously demanding that their competitors be relegated to serfs providing a necessary component of any successful product offering — billing and collecting for the service rendered.[59]

US West thus draws attention to an important issue — in order for the Commission to determine whether the market is working as an effective check on ILEC billing and collection rates for non-subscribed services, the Commission should compare those rates to the ILECs' "total costs associated with billing for interexchange non-subscribed services." Such a comparison will enable the Commission to conclude whether ILECs are charging reasonable rates or supra-competitive rates. If ILECs are extracting supra-competitive profits, this would be indicative of a market failure that is sustaining anti-competitive behavior, requiring remedial action by the Commission pursuant to the policy of the *Billing and Collection Order*.

In order to make this comparison, the Commission needs facts in the record. Pilgrim therefore suggests that the Commission, as part of its initiation of a rulemaking proceeding,

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[59] MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Opposition of US West, Inc., filed July 25, 1997, at 7-8.

should require ILECs opposing the MCI Petition to submit data in the record sufficient to enable an analysis of costs incurred by ILECs in furnishing billing and collection services. To the extent that ILECs maintain that "re-regulation" of billing and collection for non-subscribed services is not warranted pursuant to the criteria established in the *Billing and Collection Order*,[60] they should have no objection to supplying data within their control to prove their point. To the extent, however, that ILECs are not forthcoming in sharing this information with the Commission and with other interested parties in this proceeding, the Commission should draw the reasonable inference that there is no data to support a claim that ILEC billing and collection rates are reasonable.

VI. CONCLUSION

The MCI Petition and comments in support of the petition have presented the Commission with abundant information and assertions, punctuated most recently by participants at the Billing and Collection Meeting, regarding billing and collection difficulties faced by casual calling providers. The record also suggests that these difficulties are substantially linked to discrimi-

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[60] *See, e.g.*, MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, BellSouth Corporation Reply Comments, filed Aug. 14, 1997, at 3 (characterizing the billing and collection market for non-subscribed services as "competitive"). US West notes that LECs should be permitted to refashion their billing and collection contractual relationships, or withdraw from offering billing and collection, "if [the offering] is not profitable to the extent deemed appropriate . . . ." MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Reply Comments of US West, Inc., filed Aug. 14, 1997, at 13. A Commission requirement that ILECs supply cost information relating to their billing and collection services would shed light on the level of profitability the ILECs consider to be appropriate, as well as the relationship that this level of profitability may bear to the extraction of supra-competitive rents.

natory, restrictive, and anti-competitive practices followed by ILECs in their provision of billing and collection services.

Pilgrim favors the pursuit of non-regulatory solutions to these problems and is committed to participating in efforts, such as the establishment and administration of an independent call-related information database for casual calling billing and collection, that could help ease these billing and collection problems while at the same time ensuring fair compensation to those entities providing billing and collection services.

We also believe, however, that the Commission must take immediate steps to end ILECs' restrictive and discriminatory practices that currently are hindering the offering of non-subscribed services. Pilgrim therefore urges the Commission to approve the MCI Petition and begin a rulemaking proceeding to explore the credibility of the assertions made about ILEC billing and collection practices, to determine whether the market is currently working effectively to protect competitors and consumers against unreasonable rates, terms, and conditions for ILEC billing and collection services, and to take any actions warranted by the record to guard against anti-competitive practices. As part of such a rulemaking proceeding, the Commission should require ILECs to supply sufficient data in the record to enable a determination of whether rates set by ILECs for billing and collection are reasonable or instead reflect the extraction of supra-competitive profits as a result of the ILECs' exercise of their market power.

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CERTIFICATE OF SERVICE

I, Monica Gaudio, a Paralegal with the law firm of Greenberg Traurig, hereby certify that, on the 15th day of December, 1999, I have caused to be served by hand delivery a true and correct copy of the foregoing EX PARTE COMMENTS OF PILGRIM TELEPHONE, INC., to the following:

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